PUBLIC HEALTH, LABOUR AND MUNICIPAL ADMINISTRATION SECRETARIAT.

ORDER.

Bangalore, dated 28th August 1965.

S. O. 3023.—WHEREAS the Government of Mysore in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), have referred the dispute between the Workmen and the Management of Mysore Stoneware Pipes and Potteries, Ltd., Chickbanavar, Bangalore North Taluk, Bangalore District, for adjudication to the Industrial Tribunal, Bangalore, in Government Order No. PLM 413 LLD 65, dated the 28th August 1965.

AND WHEREAS a strike and lock-out in connection with the aforesaid dispute was in existence on the date of the said reference and is being continued ,

AND WHEREAS the Government of Mysore consider that the continuance of the strike and the lock-out would not be in the interest of both the parties to the dispute;

NOW THEREFORE in exercise of the powers conferred by sub-section (5) of Section 10 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore hereby prohibit the continuance of the strike by the workmen and the lock-out by the management of Mysore Stoneware Pipes & Potteries, Ltd., Chickbanavar, Bangalore North Taluk, Bangalore District.

[No. PLM 413 LLD 65.]

By Order and in the name of the Governor of Mysore,

780 G. G. PUROHIT, *Under Secy.*

Printed by the Director of Printing, Sty. & Publications at the Govt. Press, B'lore.

PART IV

Section 2-C—(ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

PUBLIC HEALTH, LABOUR AND MUNICIPAL ADMINISTRATION SECRETARIAT.

GOVERNMENT OF MYSORE.

(LABOUR DEPARTMENT.)

Labour Dispute :—Industrial Dispute between the Workmen and the Management of Mysore Commercial Union Ltd., Yeswanthapur, Bangalore-22.

Award of the Industrial Tribunal, Bangalore-published.
Read the following papers :—

1. Letter No. 677/65-66, dated 15th August 1965, from Sri R. Krishna Setty, Presiding Officer, Industrial Tribunal, Bangalore.

BEFORE INDUSTRIAL TRIBUNAL MYSORE
BANGALORE.

Dated 5th August 1965.

Present:

Sri R. Krishna Setty, B.A., LL.B. ... Presiding Officer.

I. D. No. 9 of 1965.

I Party :—

Workmen of
Mysore Commercial Union Ltd.,
Yeshwanthapur,
Bangalore-22,
By the Secretary,
Mysore Commercial Union
Employees' Association,
Main Road, Yeshwanthapur,
Bangalore-22.

-Vs-

II Party :—

Management of
Mysore Commercial Union Ltd.,
Yeswanthapur,
Bangalore-22.

Appearances.

Sri K. Subba Rao, Advocate, for the I Party Union and Sri V. L. Narasimha Murthy, Advocate, for the II Party Co.

Government Reference No.PLM 33 LLD 65, dated 6th April 1965

AWARD

An industrial dispute was stated to have existed between the workmen and management of the Mysore Commercial Union Ltd., Yeswanthapur, in respect of seven items more specifically described in the Schedule to the order of Reference. The Government of Mysore in exercise of the powers conferred upon them under Sec. 10 (1) (d) of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), by their Order No. PLM 33 LLD 65, dated 6th April 1965, referred that dispute to this tribunal for adjudication. The specific points of dispute scheduled in the order of Reference are as follows :—

"I. (i) What should be the revised scales of pay, grades of pay and annual increments in respect of employees of the Mysore Commercial Union Ltd., Bangalore?

(ii) What will be a proper wage incentive scheme suitable for the said industry which can increase the productivity and can increase the earnings of the workmen to living wages?

II. How are the various jobs and the various workmen of Mysore Commercial Union be classified and placed on scientific lines of job evaluation and merit rating?

III. (a) Has the employer of Mysore Commercial Union the capacity to pay at least living wages to its workmen?

(b) What would be the norm of production and/or labour cost in this industry in relations to cost of production to ensure all the workmen atleast a living wage?

(c) What would be suitable salary/wage-*cum*-incentive scheme in this industry to ensure balanced lost wage ratio?

IV. What would be the proper basis for introducing in acting allowance system in this industry and what would be the mode of promotion to act?

V. What would be the proper conditions of service in respect of this industry to ensure in future?

(a) systematic promotions and increments;

(b) regular and efficient performance by the workmen; and

(c) an economic output by the workmen;

(d) dearness allowance based on cost of living.

VI. What would be the interim relief to the workmen in wages, dearness allowance, etc., pending disposal of this dispute?

VII. From what date should these adjustments be given effect to?"

2. The workmen were represented by the Secretary, Mysore Commercial Employees' Association, Yeswanthapur, Bangalore, while the management was represented by the Factory Manager.

3. It is alleged in the claim statement filed on behalf of the workmen that the Union had submitted certain demands in respect of revision of wage structure, mode of fixation of employees in the revised wage scales, promotion procedure, acting allowance, etc., by means of a Notice dated 6th August 1963 to the II Party concern and that the latter did not concede any of those demands though several discussions took place, conciliation proceedings were initiated by the Assistant Labour Commissioner and Conciliation Officer, Bangalore Division, Bangalore, and that on account of unreasonable attitude taken by the management the conciliation proceedings failed and that the Government therefore had been pleased to refer the dispute to this tribunal for adjudication. The claim statement then deals with the grounds on which the demands are founded.

4. The management of the II Party concern, instead of filing the Rejoinder as directed, filed preliminary objections questioning the jurisdiction of this tribunal to adjudicate upon the points of dispute scheduled in the order of Reference. In the preliminary objections statement it is alleged that it is an admitted fact that the demands made by the workers were in terms of the demand notice dated 6th August 1963, that the said demands when compared with the points of dispute referred to in the order of Reference, it would be apparent that the points of dispute

referred to this tribunal for adjudication were not at all the subject matter of notice of demand and that inasmuch as there was no demand as required under law in respect of points of dispute, the reference is liable to be rejected in limine. It is also alleged that the Reference of the alleged points of dispute is more in the nature of the subject matter of a Reference to a Court of Enquiry and is not in the nature of points of dispute amounting to an industrial dispute between the workmen and the employer. that such a reference which is vague and which is of an academical nature, does not amount to an industrial dispute as defined in the Industrial Disputes Act, 1947, and therefore is liable to be rejected.

5. With the consent of parties the failure report of the conciliation proceedings held by the Assistant Labour Commissioner and Conciliation Officer, Bangalore Division, Bangalore, was marked as Ext. W1 for the I Party, while the Notice of demands dated 6th August 1963 issued by the Association to the management, was marked as Ext. M1 and the enclosure thereto as Ext. M2, for the management.

6. Sri K. Subba Rao the learned advocate for the I Party Association and Sri V. L. Narasimha Murthy the learned advocate for the II Party concern, addressed arguments at great length on the basis of the pleadings and the aforesaid exhibits, on the preliminary point *viz.*, whether the Reference is bad in law and this tribunal has no jurisdiction to deal with the matter. It is an admitted fact that Ext. M1 is the notice of demands dated 6th August 1963 and Ext. M2 its enclosure, sent by the Secretary of the I Party Association to the Factory Manager of the II Party Concern. It is stated in this notice that the General Body of the Association held a meeting on 6th August 1963 on behalf of the employees of the II Party concern and raised the demands noted in Ex.M2 and the same were sent to the management for implementation in the interest of industrial peace. In Ext.M2, the Association has described the demands which the management of the II Party concern was requested to implement. They are five in number. They are as follows :—

"1. Time Gradation	(a) We demand that the unskilled workmen must be treated as semi-skilled workmen after five years service and promoted being given the wages in the promoted grades.
	(b) Similarly workmen who have put in 10 and 15 years service must be treated as skilled B, and skilled A, respectively, with the wages in the promoted grades

2. Promotion Grade Committee — A Committee of equal representatives of both the Mangement and the Union representatives must be constituted to decide promotions, fitting workmen in different grades

increments, etc.

3. Relief to persons whose increments are stopped — If increments are stopped either due to Efficiency Bar or for any other reasons, after two years of stoppage of such increments the workmen must be given increments in the next higher grade.

4. Issuing written order and payment of wages in the higher Grade.

(a) Whenever workmen are promoted either temporarily or permanently to higher grades or asked to perform jobs in the higher grades written orders must be issued.

(b) Whenever workmen are carrying jobs in the higher grades in which they are not fitted they should be paid wages in the higher grade.

5. Revision of grades. The grades must be revised as follows:—

		Machine Operators	
Skilled A	...	Rs. 4-00	0-30 nP. Rs. 6-40
B	...	Rs. 3-00	0-20 nP. Rs. 4-60
Assistants Operators	...		0-15 nP. Rs. 3-20
Unskilled and others			0-10 nP. Rs. 2-30
		Manual Handicrafts	
Skilled A	...	Rs. 5-00	0-30 nP. Rs. 7-40
„ B	...	Rs. 4-50	0-25 nP. Rs. 6-50
Semi-skilled	...	Rs. 4-00	0-20 nP. Rs. 5-60
Watch and Ward		Basic	Rs. 60-4-92
Head Watchmen	...		Rs 90-5-130
Drivers	...		Rs. 100-5-140".

7. In Ext. W1. the Conciliation Officer has referred to the Notice of demands dated 6th August 1963 issued by the Association to the Factory Manager, and sets out the demands. Those demands are identical with the demands mentioned in Ext. M2. I is well-known that if disputes are not resolved by mutual negotia

tions, attempts are made by a statutory authority. Conciliation is the first step in the system provided under the Industrial Disputes Act for the settlement of industrial disputes which are not resolved by mutual negotiations. Whenever intervention of a Conciliation Officer is desired, the party desiring his intervention makes a written complaint to him setting forth the grievances of specific matters in dispute between the parties. Thereupon the Conciliation Officer holds a preliminary investigation which consists of examining (1) whether the dispute falls within his jurisdiction or not, (2) whether the grievances or demands presented to him constitute an industrial dispute or not and (3) whether the demands are *bonafide* or are frivolous or vaxacious. This preliminary enquiry or investigation embarked upon by the Conciliation Officer for satisfying himself whether an industrial dispute which has been brought to his notice, should be admitted in conciliation or not, is not regarded as part of a conciliation proceedings. If after such preliminary investigation the conciliation officer decides that he should interfere, he gives a formal notice to the parties intimating them the date of the commencement of conciliation proceedings. On such a date he may hold a meeting of the representatives of both parties jointly or of each party separately. The parties sit around a table in the presence of the Conciliation Officer and discuss the merits of the issues involved in the dispute. The task of the conciliation officer is to bring about a settlement of the dispute, if possible, by trying to adjust the conflicting views of the parties before him. He tries to develop a common ground upon which the parties can meet by pursuading the parties to give up extreme positions. In the instant case it is clear from Ext. W1 that the disputes raised by the workmen in their notice Ext. M1 and enclosure Ext. M2, were the disputes that were taken up for conciliation by the Conciliation Officer. The failure report relates to these disputes. The disputes scheduled in the Order of reference now referred to this tribunal for adjudication, were not disputes that were either raised by the workmen or coneiliated by the Conciliation Officer. As a matter of fact there was no difference between the workmen and the employer in respect of the points of dispute scheduled in the order of Reference. If there was anty such difference between them, then they would have become industrial disputes. The items in regard to which there was difference of opinion between the workmen and the management are altogether different from the items now referred to this tribunal for adjudication. The existence or apprehension of an industrial dispute is a condition precedent for making a reference to the tribunal under Sec. 10 (1) (d) of the Industrial Disputes Act, 1947.

It has been held by the Supreme Court in C. P. Sarathy's case reported in 1953 I LLJ 174, that in making a Reference under Sec. 10 of the Industrial Disputes Act, the Government is doing an administrative act and in this connection the Supreme Court has observed as follows:—

> "But it must be remembered that, in making a reference under Sec. 10 (1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot therefore, canvass the order of reference closely to see if there was any material before Government to support its conclusions, as if it was a judicial or quasi-judicial determination. No doubt, it will be open to a party seeking to impugn the resulting award to show that what was refered by Government was not an industrial dispute within the meaning of the act, and that, therefore the tribunal had no jurisdicte ion to make the award."

In the present case there is undisputed documentary evidence of unimpeachable character to prove that an industrial dispute existed between the parties not in respect of matters covered by the order of reference but only in regard to matters covered by Ext. M2. Since the disputes covered by Ext. M2 have not been referred to this tribunal for adjudication and since there was no difference of opinion between the parties in regard to the matters specified in the order of reference, it cannot be said that there was an industrial dispute for the Government to make this reference to this tribunal.

8. For these reasons I am of opinion that the reference is bad in law and this tribunal has no jurisdiction to proceed further in the matter. Accordingly I make an award rejecting the Reference.

R. KRISHNA SETTY,
Presiding Officer,
Industrial Tribunal.